

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #6	CCRB Case #: 201900909	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/28/2019 8:30 AM	Location of Incident: § 87(2)(b)	Precinct: 07	18 Mo. SOL 7/28/2020	EO SOL 3/14/2021	
Date/Time CV Reported Wed, 01/30/2019 10:56 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/30/2019 10:56 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Lauren Orouke	2747	948397	WARRSEC
2. SGT Sean Monahan	05126	947264	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Lauren Orouke	Abuse: Detective Lauren O'Rourke entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.SGT Sean Monahan	Abuse: Sergeant Sean Monahan entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.SGT Sean Monahan	Abuse: Sergeant Sean Monahan searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
D.DT3 Lauren Orouke	Abuse: Detective Lauren O'Rourke failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
E.SGT Sean Monahan	Abuse: Sergeant Sean Monahan failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On January 30, 2019, § 87(2)(b) called the CCRB and filed this complaint.

On January 28, 2019, at approximately 8:30 a.m., Detective Lauren O'Rourke and Sergeant Sean Monahan, both of the Manhattan Warrants Section, went to § 87(2)(b) apartment, located at § 87(2)(b) in Manhattan, with a bench warrant for § 87(2)(b) former associate, § 87(2)(b). While speaking with § 87(2)(b) Det. O'Rourke crossed and stood in the threshold of his front doorway (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) eventually said Det. O'Rourke and Sgt. Monahan could come inside, and they did so (**Subsumed within Allegation A; Allegation B: Abuse of Authority**, § 87(2)(g) § 87(2)(b) Sgt. Monahan searched every room in the apartment, looking for § 87(2)(b) and determined that she was not present (**Allegation C: Abuse of Authority**, § 87(2)(g) Det. O'Rourke failed to provide § 87(2)(b) with a business card (**Allegation D: Abuse of Authority**, § 87(2)(g) Sgt. Monahan allegedly failed to provide § 87(2)(b) with a business card (**Allegation E: Abuse of Authority**, § 87(2)(g) No arrest or summons resulted. § 87(4-b) § 87(2)(g)

There is no video evidence in this case.

Findings and Recommendations

Allegation A—Abuse of Authority: Detective Lauren O'Rourke entered 87 Columbia Street, Apartment #16A in Manhattan.

§ 87(2)(g)

The following facts are undisputed. On April 1, 2018, at approximately 3:05 a.m., § 87(2)(b) who was at least an associate of § 87(2)(b) and someone with whom he had been at least briefly sexually involved in the past—assaulted § 87(2)(b) inside of his apartment, located at § 87(2)(b) in Manhattan. § 87(2)(b) was putting § 87(2)(b) up for the night as she was homeless and needed a place to stay. Officers arrested § 87(2)(b) for § 87(2)(b). § 87(2)(b) arrest report (**Board Review 01**) listed her address as “Homeless” in New York State; described her relation to the victim, § 87(2)(b) as “Friend/Acquaintance”; and noted that § 87(2)(b) and § 87(2)(b) were not living together.

Following § 87(2)(b) arrest, Hon. Angela Badamo of the New York County Criminal Court issued a stay-away order of protection for § 87(2)(b) against § 87(2)(b) (**Board Review 02**). The order of protection notes that § 87(2)(b) criminal case involves non-family offenses and does not involve victims of domestic violence. On § 87(2)(b), § 87(2)(b) missed a court date regarding her April 2018 assault of § 87(2)(b) and a judge issued a bench warrant for her (**Board Review 03**). There is no address listed for § 87(2)(b) on the bench warrant. On January 7, 2019, the Warrants Section assigned § 87(2)(b) case to Det. O'Rourke.

On January 28, 2019, at approximately 8:30 a.m., Det. O'Rourke and Sgt. Monahan went to § 87(2)(b) apartment to obtain more information about § 87(2)(b) whereabouts without having done in-person surveillance at the location beforehand. They did not have a search warrant. § 87(2)(b) order of protection against § 87(2)(b) remained in effect, as did her bench warrant. Det. O'Rourke and Sgt. Monahan knocked on § 87(2)(b) front door and announced themselves as police officers, which woke § 87(2)(b) up. Aside from his dog, § 87(2)(b) was home alone. § 87(2)(b) got dressed, opened the door, and conversed with Det. O'Rourke and Sgt. Monahan at the doorway. They informed him that they were looking for § 87(2)(b) § 87(2)(b) § 87(2)(b)

§ 87(2)(b) informed them that § 87(2)(b) did not live with him, was not present at the time, and that he had an active order of protection against her. After a few minutes, § 87(2)(b) eventually stated that Det. O'Rourke and Sgt. Monahan could come inside to see for themselves that § 87(2)(b) was not present. There were no exigent circumstances requiring Det. O'Rourke and Sgt. Monahan's entry.

§ 87(2)(b) (**Board Review 04, 05, 06**) testified that, while Det. O'Rourke and Sgt. Monahan spoke with him at his doorway—but before he said they could come inside—Det. O'Rourke blocked the door from closing with her body by standing in the threshold. § 87(2)(b) would not have been able to close the door if he had tried. § 87(2)(b) denied that § 87(2)(b) ever lived with him, as he had only put her up for a few nights; denied that their relationship was romantic; and said § 87(2)(b) had only received one piece of mail at his address between April 2018 and the end of January 2019, from the Department of Social Services, whom he immediately contacted to inform that the letter was received in error as she did not live with him.

Det. O'Rourke's DD5s (**Board Review 07**) show that she took the following steps prior to January 28, 2019. On January 15, 2019, Det. O'Rourke received § 87(2)(b) bench warrant and photo. On January 17, 2019, at 9:55 a.m., Det. O'Rourke knocked on § 87(2)(b) door but did not see or hear anything in the apartment. On January 27, 2019, Det. O'Rourke conducted a shelter check at her office, which revealed that § 87(2)(b) was not, and had never been, in the shelter system. At all times prior to January 28, 2019, and for months afterwards, as well, § 87(2)(b) address on the DD5 documents says New York and does not list a particular residence. The DD5s refer to § 87(2)(b) as § 87(2)(b) arrest location—never as her residence, past or present.

Det. O'Rourke (**Board Review 08**) testified that, at the time of her CCRB interview, she knew § 87(2)(b) to be transient, described her as “a ghost,” and knew that § 87(2)(b) did not receive HRA benefits, was not in the NYC homeless shelter system, and had no residence listed on file anywhere. Det. O'Rourke conducted an HRA check for § 87(2)(b) benefits prior to her arrival at § 87(2)(b) apartment, but her DD5s (**Board Review 07**) show that this was actually conducted weeks later, on February 19, 2019. Det. O'Rourke believed there was a possibility that § 87(2)(b) might still reside there, because § 87(2)(b) was arrested there in April 2018 and because § 87(2)(b) had a prior romantic history with § 87(2)(b). However, after § 87(2)(b) told Det. O'Rourke that he did not know where § 87(2)(b) was and denied that she was present or living with him, it was very obvious to Det. O'Rourke that § 87(2)(b) had no dealings with § 87(2)(b) that he did not know where she was, and that she was not living with him. During this conversation, Det. O'Rourke stood “probably just outside the frame, or maybe just inside the frame, or maybe leaning on the frame,” which Det. O'Rourke clarified to mean that she was standing “probably just in the doorway.” Det. O'Rourke acknowledged that her body was likely in the way of § 87(2)(b) closing the door.

Sgt. Monahan (**Board Review 09**) initially testified that § 87(2)(b) was § 87(2)(b) last known address, which was obtained from the warrant. Upon reviewing the bench warrant, which listed § 87(2)(b) address as blank, Sgt. Monahan said § 87(2)(b) address could have been established in any number of unspecified ways, including dozens of unspecified database searches that an investigating detective such as Det. O'Rourke could conduct. Sgt. Monahan was unable to clarify how or why he believed that § 87(2)(b) apartment was § 87(2)(b) last known address if not from the bench warrant itself. Sgt. Monahan testified that he and Det. O'Rourke spoke with § 87(2)(b) while standing in front of the doorway and outside the apartment.

§ 87(2)(g)

In New York State, a bench warrant “must be executed in the same manner” as an arrest warrant. NY Criminal Procedure Law, § 530.70 (**Board Review 10**). “[T]he Fourth Amendment has drawn a firm line at the entrance to the house,” so absent exigent circumstances or consent, “that threshold may not reasonably be crossed without a warrant.” Payton v. New York, 445 U.S. 573 (1980) (**Board Review 11**). The Fourth Amendment prohibits police officers from entering the residence of a third party, absent exigent circumstances or consent, to search for the subject of an arrest warrant without first obtaining a search warrant for the third-party residence itself. Steagald v. United States, 451 U.S. 204 (1981) (**Board Review 12**). However, “for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” Payton, supra. Generally speaking, a police officer may reasonably presume that the subject of an arrest warrant is present in her residence early in the morning, but this presumption does not apply if the police officer has no information placing the subject in the particular apartment itself, or even the apartment building overall, for weeks preceding the entry. United States v. Luckey, 701 F.Supp.2d 464 (SDNY 2009) (**Board Review 13**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation B—Abuse of Authority: Sergeant Sean Monahan entered § 87(2)(b)

in Manhattan.

Allegation C—Abuse of Authority: Sergeant Sean Monahan searched § 87(2)(b)

in Manhattan.

§ 87(2)(g)

The following facts are undisputed. After speaking with Det. O’Rourke and Sgt. Monahan at his doorway for a few minutes, § 87(2)(b) said they could come inside and see for themselves that § 87(2)(b) was not present, but requested that Sgt. Monahan be the one to search the apartment because he was uncomfortable with a female officer searching. Det. O’Rourke and Sgt. Monahan fully entered the apartment. There were no exigent circumstances requiring their entry. Det. O’Rourke stood in the entryway with § 87(2)(b) and played with his dog, while Sgt. Monahan briefly looked in every room to search for § 87(2)(b). After determining that § 87(2)(b) was not present, Det. O’Rourke and Sgt. Monahan made small-talk with § 87(2)(b) before departing at approximately 8:55 a.m., and advised § 87(2)(b) to contact them if he had more information. Neither Sgt. Monahan nor Det. O’Rourke asked § 87(2)(b) to sign a consent-to-search form, and they did not prepare one (**Board Review 14**). Neither Sgt. Monahan nor Det. O’Rourke documented the consent-search in their memo books (**Board Review 15, 16**).

At 1:11 p.m. that same day, § 87(2)(b) called Det. O’Rourke and left a brief voicemail message, which Det. O’Rourke played during her CCRB interview between the 19:22 and 20:36 marks (**Board Review 08**). In the voicemail, § 87(2)(b) stated verbatim: “§ 87(2)(b)

Do not, please, do not—I’m not gonna open the door—do not come to my door again. § 87(2)(b)

This is bullshit. And I’ve also called some lawyers. You’re harassing me now. This is the second time. Enough. Have a good fucking night.”

§ 87(2)(b) (**Board Review 04, 05, 06**) testified that Det. O’Rourke, standing in his doorway threshold, repeatedly slapped a piece of paper that she said gave her the right to enter his apartment to look for § 87(2)(b). § 87(2)(b) insisted on calling his local precinct stationhouse to see if they had a search warrant, but Sgt. Monahan talked him out of doing that. § 87(2)(b)

initially refused the officers entry. § 87(2)(b) did not feel free to refuse them entry, and eventually relented to their pressure. When Det. O'Rourke and Sgt. Monahan fully stepped into his apartment, § 87(2)(b) believed they did so against his will.

Det. O'Rourke (**Board Review 08**) testified that, after a five minute conversation in which she repeatedly asked § 87(2)(b) if § 87(2)(b) lived with him, and he repeatedly said no, § 87(2)(b) said, "You could come in and look." Det. O'Rourke did not remember whether she said she had the right to enter and search the apartment or whether § 87(2)(b) wanted to call the local stationhouse. No officer told § 87(2)(b) that he could refuse them entry. Det. O'Rourke described § 87(2)(b) pre-consent demeanor by saying: "He was alright. Like, you know, nobody really wants the cops at their door. I understand that."

Sgt. Monahan's (**Board Review 09**) testified that he and Det. O'Rourke spoke with § 87(2)(b) while his door was closed and open. Before entering the apartment, Sgt. Monahan and Det. O'Rourke repeatedly asked § 87(2)(b) "Do you mind if we come inside?" Sgt. Monahan did not remember whether he or Det. O'Rourke said they had the right to do so. § 87(2)(b) never said he did not want the officers to enter his apartment, but expressed hesitation about them coming inside due to his apartment being messy. At some point, either Det. O'Rourke or Sgt. Monahan informed § 87(2)(b) that he had the right to decline them entry. After a few minutes, § 87(2)(b) invited the officers inside and permitted them to enter the apartment by saying something to the effect of, "I'll let you in because I don't want you coming back." Sgt. Monahan believed that § 87(2)(b) consented in order to avoid having to deal with the officers returning at early-morning hours until they confirmed whether § 87(2)(b) was at the apartment.

§ 87(2)(g)

"It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable," absent exigent circumstances or consent. Payton, supra (internal quotations and citations omitted) (**Board Review 11**). "Consent to search...must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances." People v. Gonzalez, 39 N.Y.2d 122 (1976) (**Board Review 17**). "Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle." Id. "Submission to authority is not consent." Id. The Right to Know Act (RTKA) requires that NYPD officers seeking consent to search do so without making threats or promises of any kind. NYC Administrative Code 14-173(a)(2) (**Board Review 18**).

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

Allegation D—Abuse of Authority: Detective Lauren O’Rourke failed to provide § 87(2)(b) with a business card.

Allegation E—Abuse of Authority: Sergeant Sean Monahan failed to provide § 87(2)(b) with a business card.

§ 87(2)(g)

No arrest or summons resulted.

§ 87(2)(b) (**Board Review 04, 05, 06**) testified that neither Det. O’Rourke nor Sgt. Monahan provided him with a business card. Instead, Det. O’Rourke ripped a corner off of the piece of paper that she said gave her the right to enter his apartment and, on this scrap of paper, wrote only her name and rank (Det. O’Rourke [sic]), command (Manhattan Warrants), and phone number. The scrap of paper did not include Det. O’Rourke’s shield number or any information directing § 87(2)(b) to call 311 to file a complaint. The investigation obtained a photocopy of this scrap of paper from § 87(2)(b) which corroborated his testimony (**Board Review 19**).

In her DD5s (**Board Review 07**), Det. O’Rourke noted that she provided § 87(2)(b) with a business card. Det. O’Rourke (**Board Review 08**) testified that the handwriting on the scrap of paper that § 87(2)(b) provided to the CCRB was her handwriting, but she could not account for how it came to be in his possession. Det. O’Rourke insisted that she provided § 87(2)(b) with an actual business card, and confirmed that she was equipped with them on the day of the incident. Det. O’Rourke did not allege that she ran out of business cards.

Sgt. Monahan (**Board Review 09**) testified that he was equipped with business cards on the incident date, and that he and Det. O’Rourke each provided a business card to § 87(2)(b).

§ 87(2)(g)

Upon completion of a home search that does not result in a summons or arrest, uniformed members of service must provide the subject of that search with a business card even if he or she does not request one, subject to certain exceptions. NYC Administrative Code 14-174(b)(3) (Board Review 20). To satisfy this requirement, a business card must, at a minimum, include: the officer's name, rank, shield number, and command; and a phone number for the 311 customer service center and an indication that this phone number may be used to submit comments about the encounter. NYC Administrative Code 14-174(f).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint to which § 87(2)(b) has been a party (**Board Review 21**).
- Det. O'Rourke has been a member of service for 10 years and named a subject in three other CCRB complaints and five other allegations, none of which were substantiated. § 87(2)(g)
- Sgt. Monahan has been a member of service for 11 years and named a subject in three other CCRB complaints and three other allegations, none of which were substantiated. § 87(2)(g).

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of August 21, 2019, the NYC Office of the Comptroller confirmed that § 87(2)(b) has not filed a Notice of Claim regarding this incident (**Board Review 22**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: #06

Investigator:	_____	Investigator <u>Conor O'Shea</u>	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date